

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

10 GEORGE CHAVEZ, II, ) Case No. ED CV 11-312-PJW  
11 Plaintiff, )  
12 v. ) MEMORANDUM OPINION AND ORDER  
13 MICHAEL J. ASTRUE, )  
14 COMMISSIONER OF THE )  
15 SOCIAL SECURITY ADMINISTRATION, )  
16 Defendant. )  
17 \_\_\_\_\_)

I. INTRODUCTION

18 Plaintiff appeals a decision by Defendant Social Security  
19 Administration ("the Agency"), denying his application for  
20 Supplemental Security Income ("SSI"). He claims that the  
21 Administrative Law Judge ("ALJ") erred when he: (1) failed to obtain  
22 the testimony of a vocational expert; (2) found that Plaintiff was not  
23 credible; and (3) failed to properly consider Plaintiff's mother's  
24 testimony. For the reasons discussed below, the Agency's decision is  
25 reversed and the case is remanded for further proceedings consistent  
26 with this opinion.

## II. SUMMARY OF PROCEEDINGS

2 In December 2007, Plaintiff applied for SSI, alleging that he was  
3 disabled due to depression, anxiety, mood disorder, anger issues, and  
4 paranoia. (Administrative Record ("AR") 81-83, 90.) The Agency  
5 denied the application initially and on reconsideration. (AR 37-46.)  
6 Plaintiff then requested and was granted a hearing before an ALJ.  
7 Plaintiff appeared with counsel and testified at the hearing on July  
8 22, 2009. (AR 17-34.) The ALJ subsequently issued a decision denying  
9 benefits. (AR 10-16.) Plaintiff appealed to the Appeals Council,  
10 which denied review. (AR 4-6.) He then commenced this action.

### III. ANALYSIS

A. The ALJ's Failure to Employ a Vocational Expert

13 The ALJ concluded that Plaintiff suffered from an affective mood  
14 disorder but was capable of performing a full range of work at all  
15 levels, provided it did not involve the public and did not require  
16 "intense interpersonal interactions with supervisors or co-workers."  
17 (AR 12.) The ALJ then consulted the Medical-Vocational Guidelines or  
18 "Grids" and concluded that Plaintiff was not disabled. (AR 16.)  
19 Plaintiff argues that his limitations precluded the use of the Grids.  
20 For the following reasons, the Court finds that it is not clear  
21 whether the ALJ should have used the Grids and, therefore, remand is  
22 warranted on this issue.

23 The Grids are a set of rules that direct whether a claimant is or  
24 is not disabled. 20 C.F.R. Chapter III, Part 404, Subpart P, Appendix  
25 2, § 200.00. Incorporated within the Grids is the number of unskilled  
26 jobs that exist throughout the national economy for the various  
27 functional levels of exertion, i.e., sedentary, light, medium, and  
28 heavy. *Id.* at § 200.00(b). An ALJ may only rely on the Grids if they

1 "completely and accurately represent a claimant's limitations," i.e.,  
2 the claimant is able to perform the "full range of jobs in a given  
3 category". *Tackett v. Apfel*, 180 F.3d 1094, 1101 (9th Cir. 1999)  
4 (emphasis in original). An ALJ may not use the Grids if a claimant  
5 has a severe, non-exertional limitation that would significantly limit  
6 the range of work he could perform. See, e.g., *Thomas v. Barnhart*,  
7 278 F.3d 947, 960 (9th Cir. 2002) (holding vocational expert must be  
8 consulted when the Grids do not "adequately take into account  
9 claimant's abilities and limitations").

10 The question presented here is whether Plaintiff's limitation to  
11 jobs involving "non-public work with no intense interpersonal  
12 interactions with supervisors or co-workers" precludes the use of the  
13 Grids. The Court cannot say with certainty whether it does and,  
14 therefore, remand is required. To begin with, it is unclear what the  
15 ALJ's prohibition on jobs involving "intense interpersonal  
16 interactions with supervisors or co-workers" means. The ALJ did not  
17 explain it and the Court does not find that this phrase has a common  
18 or generally understood meaning. As such, the Court is unable to  
19 gauge what impact if any such a restriction would have on the Grids  
20 because it cannot discern the number of jobs that would be affected by  
21 such a limitation. Nor can the Court quantify the number of jobs  
22 included in the Grids that qualify as non-public jobs because there is  
23 no breakdown between public and non-public jobs in the Grids. Absent  
24 clarity on these issues, the Court cannot determine whether the ALJ  
25 erred or not. For that reason, remand is required to allow the ALJ to  
26 further explain these limitations and the impact they do or do not  
27 have on the Grids. If they have a substantial impact on the Grids,  
28 the ALJ will need to call a vocational expert. See *Hoopai v. Astrue*,

1 499 F.3d 1071, 1076 (9th Cir. 2007) (explaining vocational expert  
 2 required when there are significant and sufficiently severe non-  
 3 exertional limitations not taken into account by the Grids).

4 The Agency disagrees. It argues that Plaintiff's affective mood  
 5 disorder is akin to the claimant's depression in *Hoopai*, where the  
 6 Ninth Circuit upheld the use of the Grids. (Joint Stip. at 7-8.) The  
 7 Court would agree to a certain extent that there are similarities.  
 8 The ALJ in the case at bar found that Plaintiff had no restrictions in  
 9 activities of daily living, no difficulties in concentration,  
 10 persistence, or pace, and only slight difficulties in social  
 11 functioning. (AR 14.) In *Hoopai*, the ALJ concluded that the claimant  
 12 had moderate difficulties maintaining concentration, performing  
 13 activities within a schedule, and attending work. *Hoopai*, 499 F.3d  
 14 1076-77. But overlayed on the ALJ's findings in the case at bar is a  
 15 restriction to non-public work and work not involving intense  
 16 interpersonal relationships, both of which the Court is unable to  
 17 quantify in terms of their impact on the Grids. Nor, due to the fact  
 18 that the impact is non-quantifiable, can the Court conclude that the  
 19 error was harmless. As such, the issue is remanded for further  
 20 consideration.<sup>1</sup>

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22 <sup>1</sup> The Court has not overlooked the fact that Plaintiff's  
 23 counsel, a lawyer from the same law firm that represents Plaintiff in  
 24 this appeal, never objected to the ALJ not calling a vocational expert  
 25 and never suggested at the administrative hearing that a vocational  
 26 expert was necessary. (AR 33-34.) Nor did counsel raise the issue  
 27 when he appealed the ALJ's decision to the Appeals Council. (AR 6.)  
 28 These failures approach invited error. See *Williams v. Astrue*, 2011  
 WL 1059124, at \*3 (D. Or. Mar. 21, 2011) (applying invited error  
 doctrine to social security case where claimant's counsel failed to  
 provide ALJ with medical records and argued on appeal that ALJ erred  
 in failing to fully develop the record because he did not obtain the  
 (continued...)

1 B. The ALJ's Credibility Finding as to Plaintiff

2 The ALJ found that Plaintiff was not credible. Plaintiff argues  
 3 that the ALJ erred in doing so. For the following reasons, this  
 4 argument is rejected.

5 Where, as here, a claimant produces objective medical evidence of  
 6 an impairment that reasonably could be expected to produce the alleged  
 7 symptoms, an ALJ must provide "specific, clear and convincing reasons"  
 8 to discount the claimant's testimony. *Smolen v. Chater*, 80 F.3d 1273,  
 9 1281 (9th Cir. 1996). A fair reading of the ALJ's decision  
 10 establishes that he rejected Plaintiff's testimony because it was  
 11 contradicted by statements he had made to his treating doctors and  
 12 because it was inconsistent with the medical record. (AR 13.) The  
 13 ALJ also found that Plaintiff had at times exaggerated his symptoms  
 14 when discussing his condition with doctors. (AR 13.) These are all  
 15 legitimate reasons for questioning a claimant's credibility. See  
 16 *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (holding lack of  
 17 objective medical evidence to support claims is a factor ALJ can  
 18 consider in evaluating claimant's testimony); *Batson v. Comm'r*, 359  
 19 F.3d 1190, 1196-97 (9th Cir. 2004) (holding "contradictions from [the  
 20 claimant's] own testimony and the lack of objective medical evidence  
 21 supporting [his] claims," among other things, justified the ALJ's  
 22 adverse credibility determination). And they are supported by the  
 23 record. Plaintiff testified at the administrative hearing that he was  
 24 suicidal and afraid he might hurt someone. (AR 20-21, 23, 26.) Yet,  
 25 when asked these same questions by treating doctors over the years, he

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26  
 27 <sup>1</sup> (...continued)

28 records). Counsel is admonished to voice his concerns at the  
 administrative level so that needless appeals can be avoided.

1 consistently denied that this was the case.<sup>2</sup> (AR 211-16, 228-48.) In  
2 addition, generally speaking, the doctors who treated him described  
3 his impairments as mild. (AR 213.) This is inconsistent with the  
4 severe ailments Plaintiff described during the hearing. (AR 20-29.)  
5 Further, though Plaintiff testified that his medications caused  
6 dizziness, drowsiness, and confusion, he consistently reported to his  
7 doctors that he did not suffer side effects from his medications. (AR  
8 27, 214-16, 234-48.) Finally, the examining psychologist found that  
9 Plaintiff was not credible and that he had rehearsed his interview  
10 with her in an effort to persuade her that he was impaired. (AR 187-  
11 94.) These reasons in combination are adequate to support the ALJ's  
12 credibility finding. For that reason, it will not be disturbed.

13 || C. Plaintiff's Mother's Testimony

14 Prior to the administrative hearing, Plaintiff's mother submitted  
15 questionnaires in which she set forth that Plaintiff suffered from  
16 severe emotional/psychological problems that interfered with his  
17 ability to function. (AR 114-21, 169-76.) She testified similarly at  
18 the administrative hearing. (AR 29-32.) In the mother's view, most  
19 of Plaintiff's problems were the result of his medications. (AR 29-  
20 32.) The ALJ rejected this testimony on the ground that the medical  
21 records did not support her belief that Plaintiff's problems were  
22 caused by his medications. (AR 14.) He further questioned her  
23 testimony because, as Plaintiff's mother, she presumably wanted to  
24 help him and, in doing so, would be helping herself since she was  
25 supporting him. (AR 14.) Plaintiff contends that the ALJ erred in

2 Plaintiff reported suicide ideation to his treating doctor on  
28 two occasions between August 2007 and April 2009. (AR 235, 237.)

1 rejecting the mother's testimony for these reasons. As explained  
2 below, this issue does not warrant remand.

3 In order to reject the mother's testimony, the ALJ was only  
4 required to set forth reasons that were germane to her testimony. See  
5 *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001). The inconsistency  
6 between the mother's testimony and the medical record is a germane  
7 reason for discounting her testimony, see *Bayliss v. Barnhart*, 427  
8 F.3d 1211, 1218 (9th Cir. 2005) (citing *Lewis*), and is supported by  
9 substantial evidence in the record. Plaintiff's doctors did not  
10 attribute his condition or the manifestations of his condition to his  
11 medications. In fact, they consistently reported that he did not  
12 suffer any side effects from his medications, as did Plaintiff. (AR  
13 210-16, 227-48.) Thus, this was a valid reason for rejecting the  
14 mother's testimony.

15 The ALJ's second reason for questioning the mother's testimony--  
16 that, as his mother, she was likely motivated to help him (AR 14)--is  
17 a little trickier. Arguably, this is germane to her credibility.  
18 See, e.g., *Romero v. Tansy*, 46 F.3d 1024, 1030 (10th Cir. 1995)  
19 (concluding alibi testimony by defendant's family members is of  
20 significantly less value than that of an objective witness); and see  
21 Ninth Circuit Model Civil Jury Instruction No. 1.11, Credibility of  
22 Witnesses ("In considering the testimony of any witness, you may take  
23 into account: . . . (4) . . . any bias or prejudice . . . ."). And,  
24 generally speaking, ALJs are entitled to employ ordinary credibility  
25 evaluation techniques in evaluating a witness's testimony. *Smolen*, 80  
26 F.3d at 1284. But, at least in this circuit, ALJs are not allowed to  
27 consider the fact that the witness is the claimant's mother in  
28 assessing her credibility. See *Regennitter v. Comm'r of Social Sec.*,

1 166 F.3d 1294, 1298 (9th Cir. 1999); and *Smolen*, 80 F.3d at 1289 ("The  
2 fact that a lay witness is a family member cannot be a ground for  
3 rejecting his or her testimony."); but *cf. Greger v. Barnhart*, 464  
4 F.3d 968, 972 (9th Cir. 2006) (upholding ALJ's rejection of claimant's  
5 former girlfriend's testimony based, in part, on fact she had a close  
6 relationship with claimant and was possibly influenced by her desire  
7 to help him). Thus, the ALJ erred when he took into account any real  
8 or perceived bias stemming from the relationship between mother and  
9 son in analyzing the mother's testimony.

10 The ALJ also, however, considered the fact that Plaintiff's  
11 mother would benefit financially if Plaintiff received benefits  
12 because Plaintiff lived with her and she supported him. (AR 14.)  
13 This *may be* a proper reason for questioning a witness's credibility.  
14 See, e.g., *Valentine v. Comm'r Soc. Sec.*, 574 F.3d 685, 694 (9th Cir.  
15 2009) ("[E]vidence that a specific spouse exaggerated a claimant's  
16 symptoms *in order* to get access to his disability benefits, as opposed  
17 to being an 'interested party' in the abstract, might suffice to  
18 reject that spouse's testimony."). The Court need not resolve the  
19 issue here, however, since the ALJ's first reason--that the mother's  
20 testimony was inconsistent with the medical record--is enough to  
21 support his finding that she was not credible. See, e.g., *Carmickle*  
22 *v. Comm'r, Soc. Sec.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008) (holding  
23 reviewing court must determine whether remaining valid reason(s) for  
24 ALJ's questioning claimant's credibility amounts to substantial  
25 evidence). For this reason, the Court finds that the ALJ did not err  
26 in rejecting the mother's testimony.

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1 IV. CONCLUSION

2 For the reasons set forth above, the Agency's decision is  
3 reversed and the case is remanded for further proceedings consistent  
4 with this opinion.<sup>3</sup>

5 IT IS SO ORDERED.

6 DATED: February 6, 2012.

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9 PATRICK J. WALSH  
10 UNITED STATES MAGISTRATE JUDGE

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26 <sup>3</sup> The Court has considered Plaintiff's request that the case be  
27 remanded for an award of benefits. That request is denied. It is not  
28 clear that Plaintiff is entitled to benefits and further proceedings  
are necessary to resolve that issue.